

HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability
company,) CASE NO. 3:17-cv-05760-BHS
)
Plaintiff,) **DECLARATION OF ANDREW P.**
) **BLEIMAN, ESQ. IN SUPPORT OF**
vs.) **PLAINTIFF'S RESPONSE TO**
) **DEFENDANTS' MOTION FOR**
KEVIN SYKES-BONNETT and SYKED) **PROTECTIVE ORDER**
ECU TUNING INCORPORATED, a)
Washington corporation, and JOHN)
MARTINSON,)

Defendants.

I, Andrew P. Bleiman, Esq., of full age and competency, do hereby certify and say as follows:

1. I am of legal age, have personal knowledge of the facts provided herein and, if called as a witness, could and would testify competently to those facts.

2. I am a licensed attorney in the State of Illinois and am a member in good standing of the Illinois bar.

3. I have been a licensed attorney in the State of Illinois since 1998.

4. I have been admitted to practice in connection with this matter on a *pro hac vice* basis.

5. I am a partner with the law firm Marks & Klein, LLP.

1 6. I am lead counsel to HP Tuners, LLC (“HP Tuners” or “Plaintiff”) in connection
2 with this matter.

3 7. This Declaration is submitted in opposition to Defendants’ Motion for Protective
4 Order.

5 8. As set forth with specificity in Plaintiff’s Motion to Compel Discovery (Dkt. 64),
6 notwithstanding Defendants’ wrongful and unlawful possession of HP Tuners’ confidential and
7 proprietary information since before this action was commenced and specific, detailed requests
8 for production and interrogatories calling for documents and information on these specific issues,
9 Defendants have failed to produce responsive documents and information and have improperly
10 avoided and evaded discovery.

11 9. Subsequent to Plaintiff’s filing of its Motion to Compel Discovery, Defendants
12 agreed to supplement their responses, provide last-known contact information for individuals
13 potentially in possession of discoverable information, and cooperate with Plaintiff in developing
14 a discovery plan to include, *inter alia*, a list of search terms, a reasonable timeline, and search
15 methodology. Dkt. 120.

16 10. The parties then proceeded to develop a discovery plan over protracted
17 negotiations spanning over approximately six (6) months, and ultimately reached agreement on
18 the integral components of the discovery plan, including a list of search terms that is significantly
19 narrower than Plaintiff’s initial request. Indeed, via email dated March 21, 2019, Defendants’
20 counsel, Phil Mann, provided an email to Plaintiff’s counsel, Andrew Bleiman, memorializing
21 the parties’ agreement with regard to the search terms, and Defendant’s agreement to run those
22 searched terms. A true and correct copy of that email is attached hereto as Exhibit A.
23 Furthermore, through a series of meet and confer conferences with Defendants’ current and prior
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25

1 counsel, the scope of many of the requests has been narrowed in several respects.

2 11. Amongst other production gaps, Defendants' production of social media records,
3 communications, tax returns, financial records and other business records are incomplete and
4 insufficient in several material respects. For example, there are significant gaps in the
5 production of communications between Defendant Sykes-Bonnett and Kenneth Cannata and
6 various documents such as financial statements, tax returns and other business records have not
7 been produced.

8
9 12. In direct opposition to their prior assertions, Defendants now admit, via email
10 dated March 21, 2019, that Sykes-Bonnett either sold or shared HP Tuners' application keys with
11 the following individuals: Kyle Hamilton, Edgar Neibles, Ellis Groo, Nigel Alexander and the
12 Mustang Shop, while Mr. Sykes-Bonnet gave credits to Christoher Breton-Jean, Jay Engberg and
13 John Lambert. This list of names includes individuals who have never been previously identified
14 by Defendants in any discovery responses in connection with this matter, which has been
15 ongoing for well over a year. (See Exhibit A).

16 13. With regard to the expert review of Defendants' source code, for example,
17 Defendants seek to characterize Plaintiff's reasonable requests as "inexplicable delay." In fact,
18 Plaintiff merely sought to obtain the source code in a manner that allowed Plaintiff's experts to
19 actually determine the extent to which HP Tuners' proprietary information was improperly
20 utilized in connection with the source code.

21
22 14. Plaintiff's expert requested certain software tools in connection with the review
23 which are well-known, benign, and largely free. Plaintiff merely requested the tools its expert
24 indicated were necessary to conduct a meaningful review.

25 I declare under penalty of perjury under the laws of the United States of America the

1 foregoing is true and correct to the best of my knowledge.

2 Executed on April 15, 2019.

3 By: s/ Andrew P. Bleiman
4 Andrew P. Bleiman